

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARCO ALMONTE,

Plaintiff,

- against -

KENNETH HINES and LAURA CADAVID,

Defendants.

15 Civ. 6843 (JFK)

ORDER

JOHN F. KEENAN, United States District Judge

On June 18, 2019, the Court received Defendants' letter motion raising additional in limine issues. (ECF No. 138.) The Court rules as follows:

- (1) Defendants' request that the Court rule on the outstanding motions in limine (documents that were not timely disclosed; evidence or arguments regarding already dismissed or withdrawn claims; and Plaintiff's alleged fake name) is deferred until trial, as consistent with the Court's initial ruling on the parties' motions in limine. (ECF No. 130.) However, Plaintiff may not make arguments related to already dismissed or withdrawn claims, and should be prepared with an offer of proof regarding any evidence he introduces.
- (2) Defendants' request to preclude Plaintiff from testifying or arguing about Eric Garner, "I can't breathe," and anti-police protests is granted. Under Rule 402, those references are not relevant to this case, since Defendants had no involvement in Eric Garner's case and the City of New

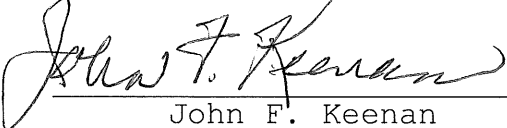
York is not a party and there is no claim for respondeat superior or municipal liability premised on the use of chokeholds. Even if such evidence were relevant, the unfair prejudice to the individual Defendants would substantially outweigh any probative value under Rule 403.

- (3) Defendants' request to preclude Plaintiff from arguing that the jury should "send a message" is granted. Usage of that phrase or similar terminology would be prejudicial and inflammatory under Rule 403, and could mislead the jury as to its proper role.
- (4) Defendants' request to preclude Plaintiff from arguing that Defendants could have used a lesser degree of force is granted. "[C]ourts have consistently held that 'the appropriate inquiry is whether the officers acted reasonably, not whether they had less intrusive alternatives available to them.'" Estate of Jaquez v. Flores, No. 10 Civ. 2881 (KBF), 2016 WL 1060841, at *5 (S.D.N.Y. Mar. 17, 2016) (quoting Scott v. Henrich, 39 F.3d 912, 915 (9th Cir. 1994)); see also, e.g., Bancroft v. City of Mt. Vernon, 672 F. Supp. 2d 391, 406 (S.D.N.Y. 2009) (if force used was not unreasonable, "it does not matter that some less intrusive alternative would have done the job").
- (5) Defendants' request to preclude Plaintiff from offering causation testimony about any alleged injuries is denied, except where "the nexus between the injury and the alleged

cause would not be obvious to the lay juror." Wills v. Amerada Hess Corp., 379 F.3d 32, 46 (2d Cir. 2004). For those injuries, likely the tendonitis and metacarpal deformities, expert evidence would be required to establish a causal connection.

SO ORDERED.

Dated: New York, New York
June 24, 2019



John F. Keenan
United States District Judge